

as-ara(st)3769-07

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Arbitration Appeal No. 3769 of 2007

Yusuf Ramzan Tanwar .. Appellant

V/S

Ganpat Kashinath Patil & ors. ... Respondents

Mr. A. S. Dubey h/f. M/s. Tripathi & Company for appellant

CORAM: **D.G. KARNIK J.**

DATE: February , 28, 2007

P.C.:

1. Heard counsel for the appellant.
2. By this appeal the petitioner / appellant challenges the order dated 29th January 2007 passed by the Joint District and Sessions Judge, Thane, deleting the names of the respondent nos. 2 and 3 from an application under section 9 of the Arbitration and Conciliation Act, 1996.
3. The facts in brief are that the respondent agreed to sell the plot in dispute to the appellant. According to the appellant, in breach of the said agreement the respondent no.1 transferred the said plot to respondent no.3 with the consent of the respondent no.2. The agreement of sale between the appellant and the respondent no.1 contained an arbitration

clause. The appellant / Petitioner therefore initiated the proceedings under section 9 of the Arbitration Act for an injunction restraining the respondents from carrying out the development. Respondent no.3 moved the trial court for deletion of his name on the ground that he was not a party to the arbitration agreement. By the impugned order the trial court ordered deletion of the names of respondent nos. 2 and 3 from the array of the parties in the application. That order is impugned in this appeal.

4. Section 9 of the Arbitration Act enables a court to grant a relief against persons who are parties to the arbitration agreement. Section 9 does not empower the court to grant a relief against a person who is not a party to the agreement. Respondent nos. 2 and 3 are not parties to the arbitration agreement. The trial court was not empowered to grant relief against respondent nos. 2 and 3. In this view, the trial court has not committed any error in ordering deletion of the names of respondent nos. 2 and 3.
5. Counsel for the respondents referred to and relied upon the decision of the Supreme Court in *Firm Ashok Traders vs. Gurumukh Das Saluja* reported in AIR 2004 SC 1433 and submitted that for the purpose of section 9 of the Arbitration Act, the locus standi of the applicant is required to be seen. I am unable to read in the decision anything which lays down that under section 9 a person can claim relief against persons who are not parties to the arbitration agreement.

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Admittedly respondent nos. 2 and 3 are not parties to the arbitration agreement. Hence the decision is of no assistance for the appellant.

6. For these reasons there is no merit in the appeal which is hereby dismissed.

(D.G. KARNIK J.)

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil application No. 5 of 2007
in
Arbitration Appeal No. 3769 of 2007

Yusuf Ramzan Tanwar .. Appellant

V/S

Ganpat Kashinath Patil & ors. ... Respondents

Mr. A. S. Dubey h/f. M/s. Tripathi & Company for appellant

CORAM: D.G. KARNIK J.

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In view of the dismissal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)